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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT DENIED TO
VICTOR LIND BY PIERCE COUNTY,

VICTOR LIND,

Appellant,

v.

PIERCE COUNTY and STATE OF
WASHINGTON, DEPARTMENT OF
ECOLOGY,

Respondents.

SHB No. 90-14

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The Shorelines Hearings Board held a hearing at Sumner, Washington, Monday, May 20, 1991, on Victor Lind's appeal which contests Pierce county's denial of a shoreline variance permit to retain a private boat storage structure at 3618 Deer Island Drive East within the shoreline setback of Lake Tapps.

Present for the Board were: Members Harold S. Zimmerman, presiding; Annette S. McGee, Nancy Burnett, Emily Jackson, and Robert Patrick. Appellant Lind represented himself. Respondent Pierce County was represented by Deputy Prosecuting Attorney Jill Guernsey. Respondent Washington State Department of Ecology was represented by Assistant Attorney General Kerry O'Hara. Court reporter Lisa Alger of Gene Barker & Associates (Olympia), recorded the proceedings.

Having heard testimony and argument, reviewed exhibits and

FINAL FINDINGS OF FACT,
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1 conferred, the Board makes these:

2 FINDINGS OF FACT

3 I

4 Since 1965, Victor Lind has owned property at 3618 Deer Island
5 Drive East on Lake Tapps. When he purchased it, the lot had a summer
6 cottage, 20' by 24', the "footprint" of his residence. This
7 structure, which had been built in the center of the lot, has been
8 added onto gradually over the years.

9 II

10 The lot is 60' wide at the road and 70' at the Lake. The Lind
11 property now includes proceeding from land towards the water, a small
12 tool shed, a 15' by 30' garage, the enlarged residence (58' wide by
13 48' deep), an adjacent covered patio (18'x 58'), an adjacent deck (13'
14 x 22'), and the most waterward structure--the shed which is at issue
15 (14' x 14'). The shed is 21' from the concrete bulkhead and ordinary
16 high water mark. There is a 7' by 18' dock on the water at the lot's
17 west side, and another dock (5' by 30') on the east side..

18 III

19 The Lind lot has a steep slope. This is characteristic of the
20 area. The house is similar to other homes in the area.

21 The Lake Tapps area has numerous waterfront homes, many with
22 docks, boat lifts, some with boat sheds or boathouses. Boating and
23 water skiing are a primary activity on the Lake. Boathouses or
24

1 storage sheds are common uses in this area.

2 IV

3 Mr. Lind has an 18 foot inboard-outboard motor boat, a dinghy,
4 two canoes, plus water skiis, a sailboard, plus other boating
5 paraphenalia to store or protect from the elements. The 18 foot boat
6 is kept in a friend's yard. He plans to store the remainder in the
7 boat storage shed.

8 V

9 When Mr. Lind began the expansion of his residence in 1965, he
10 obtained a building permit. From communicating with the County, it
11 was his understanding the permit would be valid if he did \$500 of work
12 every year on his structures. He does not have a written record of
13 this understanding of 26 years ago.

14 Pierce County has in the past had a policy under the Uniform
15 Building Code which authorized the renewal of a building permit for a
16 period of six months at a time, if a person can show receipts of \$500
17 or more for work done. The six months policy applies to the permit,
18 not to the \$500 expenditures.

19 Pierce County, with legislative approval, purged its files of
20 building permits prior to 1979. Site plans were destroyed in that
21 process. It is, therefore, difficult to determine exactly when the
22 widening and expansion of the residence was completed.

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VI

Mr. Lind gradually added to his home in piecemeal fashion through the years, building the storage shed-boathouse in 1989.

The shed is built into the bank above the lake, and is partially covered by earth below ground. The walls are concrete block, and the access is through an overhead garage-type door. Walls are reinforced with concrete and steel reinforcement bar. An uncovered deck is on top of the structure.

VII

There is no access for vehicles to this portion of the applicant's lot, and thus all work in this portion of the yard has been performed by hand. Removal of the building would require carrying materials uphill to the driveway or to a barge on the Lake. Removal would also result in significant alterations to the shoreline.

VIII

By way of background, a meeting between C.E. "Chip" Vincent, Pierce County Planning and Natural Resource Management and Mr. Lind was held June 15, 1989. The project was reviewed; necessary documentation and information was furnished. There was discussion whether the structure is a boathouse or storage structure. A boathouse in the 200 foot zone requires a shoreline conditional use permit. A storage shed within the 50 foot setback requires a shoreline variance.

Pierce County informed Lind a shoreline variance permit was required for the pre-existing structure, despite the earlier communications. The Linds applied for a variance from the shoreline setback of 50 feet, despite their earlier belief they did not need a permit for the building.

IX

After review of a completed environmental checklist, Pierce County issued a Determination of Non-Significance for the structure.

X

After Pierce County denied the shoreline variance, Mr. Lind went around the Lake, took pictures, and submitted a list of 104 locations on Lake Tapps, which he thought were in violation of County laws. Pierce County reviewed the material and subsequently listed 57 potential violations. They found no violations at 31 of the 104 properties, and determined that 14 properties existed as they had been prior to the Shoreline Management Act.

The Pierce County Hearing Examiner stated: "The construction of structures without a building permit in violation of setbacks is not an unusual occurrence." Exh. R-13, page 3(9e).

XI

The structure results in no significant adverse environmental impacts to the shoreline. In particular, no views will be adversely impacted. There will not be adverse aesthetic impacts. There will

1 not be adverse impacts to wildlife, navigation or coastal processes.

2 It is uncontested that the structure conforms to other applicable
3 Pierce County regulations, including the Pierce County Zoning Code.

4 XII

5 The narrowness of the Lind lot, the location of the original
6 cabin on the lot, the steepness of the lot, leads to a limited place
7 where a boathouse or boat shed could be located. Having a boatshed to
8 enable the Linds to further use the Lake is a reasonable use. Pierce
9 County asserted that if Mr. Lind had applied for a conditional use
10 permit to build a boathouse, a variance would not be required.

11 XIII

12 Any Conclusion of Law deemed to be a Finding of Fact is hereby
13 adopted as such.

14 From these Findings of Fact, the Board makes these:

15 CONCLUSIONS OF LAW

16 I

17 The Shorelines Hearings Board has jurisdiction over this appeal.
18 Chapt. 90.58 RCW.

19 II

20 The Board reviews the property for consistency with the Pierce
21 County Shoreline Master Program (SMP), and the Shoreline Management
22 Act, Chapt. 90.58 RCW.

23 The Board concludes that this is a unique case, with a
24 complicated history before the County and an unusual situation around
25 Lake Tapps.

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III

Under the Pierce County SMP the site is within the rural residential designation. A boathouse or storage shed are uses consistent with this shoreline environment and are not otherwise prohibited by law.

IV

The Pierce County SMP has thirteen goals for residential development. It is alleged that this structure allegedly would violate the goal on maintaining adequate distances between shorelines and structural developments to ensure aesthetic qualities. No other SMP goals are alleged to be violated.

We conclude that this goal will not be contravened. Aesthetic values will not be harmed.

V

The remaining issues in this case focus on whether shoreline variance criteria have been satisfied. See WAC 173-14-150, and Pierce County SMP Regulations at 65.72.020 which are to the same effect.

WAC 173-14-150(2)(a) requires:

That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program;

1 Under the narrow interpretation of this case, the Board
2 concludes that the building in dispute is a boathouse as Pierce
3 County's evidence shows, and therefore does not require a variance,
4 but instead a conditional use permit.

5 VI

6 The Board further concludes while the appellant could meet most
7 of the criteria for a variance, he fails at one point:
8 WAC 173-14-150(2)(b) which requires that the hardship be specifically
9 related to the property, be the result of unique conditions such as
10 irregular lot shape, size, or natural features, and not from deed
11 restrictions or the applicant's own actions.

12 The Board concludes that the hardship is specifically due to the
13 applicant's own actions, by constructing the building itself within 20
14 feet of the shoreline.

15 VII

16 With the variance issue moot, the Board turns to the issue of the
17 necessary conditional use permit for the boathouse. By applying for a
18 boathouse permit, appellant Lind could have a new opportunity to
19 preserve his structure, built without properly-approved building
20 permits.

21 VIII

22 Pierce County could require whatever is allowed in this remanded
23 process to eventually legitimize the boathouse, but without having to
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1 issue a variance. The boathouse would unequivocally be called a
2 boathouse.

3 IX

4 The Board further concludes that for the county to require the
5 appellant to tear down the boathouse (storage shed) could cause
6 adverse impacts to the shoreline and environment of Lake Tapps, with
7 no gain to the public.

8 X

9 Any Finding of Fact deemed to be a Conclusion of Law is hereby
10 adopted as such.

11 From these Conclusions of Law, the Board enters this:
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ORDER

Pierce County's denial of the shoreline variance permit for the Lind storage shed is AFFIRMED, but this matter is REMANDED to Pierce County for action consistent with this Opinion.

DONE this 9th day of September, 1991.

SHORELINES HEARINGS BOARD



HAROLD S. ZIMMERMAN, Presiding and Chair



ANNETTE S. MCGEE, Member



NANCY BURNETT, Member



EMILY JACKSON, Member